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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

DOROTHY CLARK,

Plaintiff and Appellant,

v.

STATE DEPARTMENT OF STATE
HOSPITALS et al.,

Defendants and Respondents.

A152753

(Napa County
Super. Ct. No. 16CV000534)

Dorothy Clark sued her employer, the State Department of State Hospitals (the Department) and several of its individual employees (collectively respondents). She alleged, among other causes of action, race discrimination in violation of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.).¹ The trial court granted respondents' motion for summary judgment and entered judgment in their favor. We affirm.

BACKGROUND

Notwithstanding Clark's failure to provide a proper statement of facts in her opening brief, as discussed in more detail below, we have gleaned the following facts and procedural background.

A.

From April 2014 through August 2015, Clark worked as a psychiatric technician at the Department's facility in Napa (Napa State Hospital; hereafter the Hospital). As a

¹ Undesignated statutory references are to the Government Code.

Caucasian, Clark was in the minority among Hospital staff. Filipinos make up the largest percentage of psychiatric technicians, registered nurses, and psychiatric technician assistants.²

Throughout her employment with the Hospital, Clark actively sought overtime opportunities by requesting additional shifts. Nursing coordinators and unit supervisors are responsible for approving or denying overtime requests.

From April through December 2014, Clark was supervised by respondent Susan LePage. LePage reported to a nursing coordinator, who in turn reported to a program director. All of Clark's supervisors in this unit were Caucasian. Clark states she complained to LePage on several occasions in 2014 that other employees were, at unspecified times, changing documentation to give themselves, or other Filipino employees, preference for overtime assignments. However, LePage does not recall denying Clark's requests to work overtime, except for a couple of times toward the end of Clark's assignment when LePage was concerned about her being overworked. In January 2015, Clark requested and was granted a transfer to a different unit due to interpersonal conflicts.

From May through August 2015, Clark was supervised by respondents Ryan Viray (shift supervisor), Amos DeLeon (unit supervisor), Theresa Magtanong (nursing coordinator), and Margo McCandless (program director). With the exception of the highest ranking member of this group, McCandless, Clark's supervisors in this unit (Viray, DeLeon, and Magtanong) were all Filipino.

DeLeon and Magtanong were responsible for approving Clark's overtime requests. It is undisputed Magtanong did not block Clark from overtime opportunities. Clark and the respondents disagree on how frequently DeLeon denied Clark's requests for overtime shifts. Clark testified at her deposition that DeLeon denied her overtime shifts "consistently." DeLeon, on the other hand, does not recall denying any of Clark's

² Both parties use the term "Filipino" in their briefs. We shall do so as well, but, as respondents note, the term is intended to refer to ethnic background and does not imply Clark's former coworkers are not American citizens or legally present in the country.

overtime requests other than when he temporarily put a hold on overtime. DeLeon stated the hold was due to Clark's recent cancellation of overtime assignments, which he took as a sign she was overworked. DeLeon applied this same policy to both Filipino and Caucasian employees.

Sometime in 2015, Clark met with respondent George Gatica, the Hospital's Equal Employment Opportunity Coordinator. The parties give differing accounts of what was discussed. Gatica declares he and Clark discussed her reports of conflict with her coworkers. Clark, on the other hand, states she informed Gatica adverse actions were being taken against her "based on [her] race and the fact that [she] had complained about improper activities and preferential treatment to Filipino coworkers."

It is undisputed Gatica, who is Hispanic, determined no investigation or further review was warranted. Unsurprisingly, given their disagreement about what was discussed, the parties also disagree about the reasoning for Gatica's decision. According to Clark, Gatica informed her no investigation was needed because Clark, as a Caucasian, was not protected against racial discrimination. Gatica denies making any such statement. He recalls telling Clark there was no basis to investigate her reports of interpersonal conflict because they did not raise any issues implicating a protected category or protected activity. Clark also contacted the Department's Equal Employment Opportunity Office in Sacramento and obtained a complaint form. Clark does not recall submitting a completed complaint form.

On August 1, 2015, Clark decided to accept a position at a different hospital. Clark gave 30 days' notice to Magtanong and others, via e-mail, that she was transferring to the Department's hospital in Vacaville. In that e-mail, Clark stated, "I feel I will never promote, I've been harassed, retaliated against, and been faced with discrimination." No one contacted Clark to ask about her claims.

B.

In January 2016, Clark filed a charge with the Department of Fair Employment and Housing, which issued a right-to-sue notice and closed the case. Clark filed a complaint in Napa Superior Court alleging six causes of action: (1) racial discrimination

in violation of section 12940, subdivision (a); (2) harassment on the basis of race in violation of section 12940, subdivision (j); (3) retaliation in violation of section 12940, subdivision (h); (4) failure to take all reasonable steps to prevent harassment, discrimination, and retaliation in violation of section 12940, subdivision (k); (5) negligent supervision; and (6) constructive termination. Although the Department (specifically the Hospital) was named as a defendant to all causes of action, Clark named the individual defendants only in her harassment cause of action. Clark alleged her Filipino supervisors denied her overtime assignments, required her to work alone when safety protocols required the presence of more than one technician, blocked her from communications by speaking in Tagalog, and eventually “forced [her] to seek a transfer and quit her position at [the Hospital] because of the ongoing harassment.”

Respondents filed a motion for summary judgment or, alternatively, summary adjudication. Respondents argued Clark’s racial discrimination cause of action failed, as a matter of law, because she either could not state a prima facie case, as none of the asserted wrongful conduct constituted an adverse action, or, in the alternative, any adverse employment actions were taken for legitimate, nondiscriminatory reasons and not on the basis of discriminatory animus.

The trial court heard the motion, sustained several evidentiary objections, and granted respondents’ motion for summary judgment in its entirety. The trial court found no evidence to support Clark’s racial discrimination cause of action, explaining, “[t]here is no evidence that the [individual d]efendants took [the purportedly adverse] actions *because* [Clark] was white.” Accordingly, the court entered judgment in favor of respondents. Clark filed a timely notice of appeal.

DISCUSSION

A.

Clark has forfeited her arguments.

Clark has forfeited her arguments on appeal because she does not set out the material facts and underlying evidence with citations to the record and her arguments are incomplete and conclusory.

Although our review is de novo, the scope of our review is limited to those issues adequately raised and supported in the appellant's opening brief. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.) We must presume the judgment is correct, and the appellant bears the burden of affirmatively demonstrating error. (*Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443.) "To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error." (*In re S.C.* (2006) 138 Cal.App.4th 396, 408; Cal. Rules of Court, rule 8.204(a)(1)(C) [requiring briefs to "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears"].) When appealing after an order granting summary judgment, an appellant is also required to cite the evidence supporting the separate statement of undisputed facts. (*Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1378.)

Clark's briefs fall well short of the mark. She provides only a single citation to the first page of her "separate statement of disputed material facts" and thereafter cites only to the individual (purportedly undisputed) facts within that document, without providing volume or page numbers to any of the evidence supporting such "facts." She deals superficially with the separate statement of material facts and makes no attempt to summarize any of the declarations submitted in connection with the summary judgment motion, much less address the evidentiary objections sustained by the trial court.³ In her entire argument section, Clark provides only three page citations to the record. In several places, she engages in an extended discussion of what the evidence purportedly

³ Clark does not identify each party's objections, cite the portion of the record where the trial court sustained several objections, or explain how the trial court's rulings were erroneous. Clark has forfeited any contention the trial court abused its discretion in sustaining respondents' objections to her evidence. Thus, we presume all of the evidentiary objections were properly sustained and do not address the objections further. (See Code Civ. Proc., § 437c, subd. (c) ["[i]n determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court"].)

shows without *any* citation to the record. Her reply brief does not grapple with respondents' arguments or evidence and omits any citations to the record.

Clark has forfeited all of her arguments on appeal. (See, e.g., *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115–1116 [appellate court may disregard any assertion that is unsupported by citations to the record]; *Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205 [problem is “especially acute” on appeal from summary judgment].) With respect to her harassment, retaliation, and common law causes of action, Clark has further forfeited any contention of error by making only conclusory arguments. (*People v. Stanley* (1995) 10 Cal.4th 764, 793 [reviewing courts may disregard points missing cogent legal argument].)

B.

*The trial court properly granted
summary judgment on Clark's racial discrimination claim
regarding denial of overtime.*

Notwithstanding Clark's deficient briefs, we will briefly address the merits of Clark's more developed argument, based on our own independent review of the record. Clark focuses on her race discrimination cause of action, particularly her claim she was denied overtime in unspecified instances because of her race. She argues the Department did not meet its initial burden, as the party moving for summary judgment, of establishing a legitimate nondiscriminatory reason for denying her overtime. In the alternative, she contends she established a triable issue of material fact on discriminatory motive. We disagree.

In determining whether the trial court properly granted the summary judgment motion with respect to this race discrimination claim, we apply a three-stage burden-shifting test. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 354.) First, the employee must establish a *prima facie* case of wrongful discrimination. If the employee satisfies this burden, there is a presumption of discrimination, and the burden then shifts to the employer to produce admissible evidence showing that its action was taken for a legitimate, nondiscriminatory reason. Finally, if the employer meets its burden, the

employee then must show that the employer’s proffered reasons were pretexts for discrimination or produce other evidence of intentional discrimination. (*Id.* at pp. 354–356.)

For purposes of this appeal, we assume Clark established a *prima facie* case with respect to the denial of overtime.

1.

The Department met its burden by presenting evidence of several legitimate nondiscriminatory reasons to deny Clark’s requests for overtime.

The Department presented evidence, in the form of declarations from LePage and DeLeon, that overtime scheduling involved a number of factors, such as costs and shift needs, which meant Clark may not have been scheduled for overtime when a less expensive psychiatric technician assistant was available or when a registered nurse was required. LePage and DeLeon also declared that Clark’s previously scheduled overtime requests were denied out of wellness considerations applied uniformly to any employee who reported sick, cancelled other shifts, or otherwise appeared overworked. LePage, DeLeon, and Magtanong each declared they did not consider race in making such decisions.

2.

Because the Department met its burden, Clark was required to produce “ ‘substantial responsive evidence’ that the employer’s showing was untrue or pretextual.” (*Martin v. Lockheed Missiles & Space Co.* (1994) 29 Cal.App.4th 1718, 1735.)

She failed to do so. In the trial court, Clark asserted the “[overtime] system was [racially] biased” but pointed to no evidence supporting her assertion. On appeal, Clark contends the trial court failed to properly consider what she deems “direct evidence” of racial discrimination—her testimony that the Equal Employment Opportunity Coordinator, Gatica, told her Caucasian employees could not complain of racial discrimination. Although Gatica denies making the statement, for the purposes of reviewing an order granting summary judgment, we assume he did. (*McDonald v.*

Antelope Valley Community College Dist. (2008) 45 Cal.4th 88, 96–97; *DeJung v. Superior Court* (2008) 169 Cal.App.4th 533, 550, fn. 11.) Gatica’s comment, even if we assume it shows bias against Caucasians, is nonetheless insufficient to support an inference Clark was denied overtime because of her race. “[A]nimity of coworkers, even if superior to plaintiff in rank or tenure, is not material” if they did not participate in the challenged employment decision. (*King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 434.) Clark offers no evidence Gatica had any involvement in the denial of overtime on which she bases her discrimination claim.

We agree with respondents that Clark’s evidence showed only that she *felt* or *speculated* race was involved in her Filipino supervisors’ employment decisions. “[A] plaintiff’s subjective beliefs in an employment discrimination case do not create a genuine issue of fact; nor do uncorroborated and self-serving declarations.” (*King v. United Parcel Service, Inc., supra*, 152 Cal.App.4th at p. 433.) Nor is it sufficient for Clark to show coworkers and supervisors involved in making overtime decisions were not Caucasian. Rather, there must be “some other circumstance” suggesting discriminatory animus. (*Guz v. Bechtel National, Inc., supra*, 24 Cal.4th at p. 355.) Clark has failed to present any substantial evidence from which a rational trier of fact could reasonably infer any adverse employment action was based on discriminatory animus against Caucasians. Summary judgment was properly granted on this basis.

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

BURNS, J.

WE CONCUR:

JONES, P. J.

NEEDHAM, J.

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